

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:09-00194

CARL EVAN TOOLEY II

**ORDER**

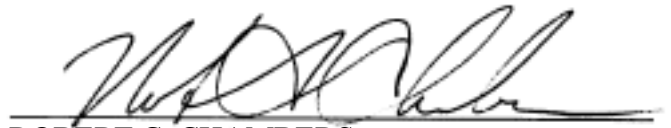
Pending is Defendant's Motion to Dismiss (Doc. 20). This Court has Ordered supplemental briefing on issues related to this motion on two separate occasions: first, on January 27, 2010, following a Pre-trial Motions Hearing and the Court's bench decision to apply intermediate level scrutiny to the constitutional questions involved; the Court Ordered supplemental briefing a second time on February 24, 2010, immediately following the Fourth Circuit Court of Appeals decision in *United States v. Chester*, No. 09-4084, slip op. (4th Cir. Feb. 23, 2010) (unpublished). While the government filed a limited response to the first request for additional briefing, it did not file anything in response to the Court's request subsequent to the *Chester* decision.

In a separate, but similar case – *United States v. Chapman* – pending before this Court, the United States has filed a memorandum which directly addresses the impact of *Chester* on the current landscape of the law. In addition, this memorandum contains substantial argument which may be relevant to the issues in the instant case, but are contained nowhere in the record. The Court is perplexed by the omission in this case on the part of the United States – especially considering the complexity and importance of the issues involved. In the interests of generating a full and complete record, the Court will permit one final opportunity for the government to submit supplemental

briefing on this matter. If the government wishes to incorporate any relevant legal arguments contained in its *Chapman* briefing to the instant case it is **DIRECTED** to do so no later than **Tuesday, May 11, 2010**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: May 4, 2010

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE